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State v. Alvarez-Cabrera Appellant's Brief Dckt. 36821

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 36821
)	
v.)	
)	
MANUEL ALVAREZ-CABRERA,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Manuel Alvarez-Cabrera appeals from his judgment of conviction for aggravated driving under the influence of alcohol. I.C. § 18-8006. Mr. Alvarez-Cabrera pleaded guilty and the district court imposed a unified sentence of ten years, with five years fixed. Mr. Alvarez-Cabrera now appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of ten years, with five years fixed, upon Mr. Alvarez-Cabrera following his plea of guilty to aggravated driving under the influence of alcohol?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Ten Years, With Five Years Fixed, Upon Mr. Alvarez-Cabrera Following His Plea Of Guilty To Aggravated Driving Under The Influence Of Alcohol

On February 12, 2009, officers from the Twin Falls Police Department were dispatched to an injury crash at the intersection of Blue Lakes Boulevard North and Falls Avenue in Twin Falls. (Presentence Investigation Report (*hereinafter*, PSI), p.2.) A collision had occurred between a van driven by Mr. Alvarez-Cabrera and another vehicle with two passengers. (PSI, p.2.) Mr. Alvarez-Cabrera was removed from his vehicle and transported to the Magic Valley Regional Medical Center for medical care and a blood alcohol sample was taken. (PSI, p.2.) Mr. Alvarez-Cabrera's blood alcohol level was .18. (PSI, p.2.)

Mr. Alvarez-Cabrera was charged with aggravated driving under the influence of alcohol. (R., p.23.) He pleaded guilty and the district court imposed a unified sentence of ten years, with five years fixed. (R., p.36-50; 54.) Mr. Alvarez-Cabrera appealed. (R., p.61.) He asserts that the district court abused its discretion by imposing an excessive sentence.¹

¹ This appeal was stayed pending the resolution of two post-judgment motions in the district court: a motion for return of property, and a motion to withdraw the guilty plea. Counsel was appointed for Mr. Alvarez who, for reasons unknown, did not pursue the motion for return of property. A hearing was held on the motion to withdraw the guilty plea and no evidence was submitted by counsel for Mr. Alvarez-Cabrera. Consequently, neither of these motions are the subject of the current appeal.

Mr. Alvarez-Cabrera stated that he had traveled to Boise from Phoenix, Arizona to look for a friend who had offered him employment. (PSI, p.3.) Once Mr. Alvarez-Cabrera was in Boise, his friend would no longer answer the phone and he could not find him. (PSI, p.3.) Mr. Alvarez-Cabrera left Boise and began consuming beer during the drive. (PSI, p.3.) He stated that he did not recall what happened, but felt very bad about what had happened. (PSI, p.3.)

Mr. Alvarez-Cabrera has been in a relationship with Anahlia Rios for the past eight or nine years and has four children with her. (PSI, p.5.) She had one son from a previous relationship. (PSI, p.5.) She provided a letter in support of Mr. Alvarez-Cabrera, stating that he had always been responsible for their family. (PSI, p.6.) She and the children had suffered from economic and emotional problems due to Mr. Alvarez-Cabrera's absence. (PSI, p.6.) Mr. Alvarez-Cabrera was the provider for all of his children. (PSI, p.7.)

Mr. Alvarez-Cabrera stated that he had been consuming alcohol since the age of sixteen and drank beer and/or tequila approximately once a month. (PSI, p.8.) He admitted that drinking had become a problem because it caused him to commit the instant crime and to become separated from his family. (PSI, p.8.) He wanted to quit drinking and was willing to participate in a treatment program. (PSI p.8.) He planned to address alcohol abuse by being reunited with his family and by not drinking and driving. (PSI, p.8.) While he was incarcerated in the county jail, Mr. Alvarez-Cabrera participated in the Reformers Unanimous program, which is a faith-based program that focuses on reforming behavior by transforming thought processes according to God's Word. (Letter from Pastor Keith Thompson.)

Mr. Alvarez-Cabrera asked for the opportunity to be placed on a rider so that he could be reunited with his family soon. (PSI, p.9.) He stated, “they need me and they are suffering because of my stupidity to drink. I would like to be given a chance to get my money back. Not for me, but for my family who needs it.” (PSI, p.9.)

Mr. Alvarez-Cabrera addressed the district court at the sentencing hearing. He stated:

First, what I would like to ask for is forgiveness. And I like I told to the interpreter and also to the public defender and ask forgiveness from the persons I hurt. I didn’t come to this state to cause harm. I was trying to seek a way to make things better for my family.

Sincerely, I feel really bad for what is done and, please, I apologize for what I have done. And I’m sorry to make you waste time having to deal with my case. Forgive me. I’m sorry.

(Tr., p.32, Ls.2-7.)

Considering Mr. Alvarez-Cabrera’s family support, expression of remorse, and desire to get treatment for his alcohol problem, he asserts that the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Alvarez-Cabrera respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 3rd day of September, 2010.

_____/s/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3rd day of September, 2010, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

MANUEL ALVAREZ-CABRERA
INMATE #93824
ICC
P O BOX 70010
BOISE ID 83707

RANDY J STOKER
DISTRICT COURT JUDGE
E-MAILED COPY OF BRIEF

TWIN FALLS COUNTY PUBLIC DEFENDER
231 4TH AVE N
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KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED COPY OF BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JMC/eas